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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/720,136	03/16/2001	Beverly B. Teter	UMARY3	7554

23599 7590 12/04/2001

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EXAMINER

WEDDINGTON, KEVIN E

ART UNIT	PAPER NUMBER
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1614

DATE MAILED: 12/04/2001

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.  
09/720,136

Applicant(s)

Teter

Examiner  
Kevin E. Weddington

Art Unit  
1614



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on Nov 15, 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above, claim(s) 1-9 and 19-21 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 10-18 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claims \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119

- 13) ☒ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- a) ☒ All b) ☐ Some\* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \*See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

## Attachment(s)

- 15) ☐ Notice of References Cited (PTO-892) 18) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 16) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 19) ☐ Notice of Informal Patent Application (PTO-152)
- 17) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_ 20) ☐ Other:

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CLAIMS 1-21 ARE PRESENTED FOR EXAMINATION.

APPLICANT'S INFORMATION DISCLOSURE STATEMENT FILED JUNE 18, 2001 HAS BEEN RECEIVED AND ENTERED.

APPLICANT'S ELECTION FILED NOVEMBER 15, 2001 IN RESPONSE TO THE RESTRICTION REQUIREMENT OF OCTOBER 15, 2001 HAS BEEN RECEIVED AND ENTERED. THE APPLICANT ELECTED THE INVENTION DESCRIBED IN CLAIMS 10-18 (GROUP II) WITH TRAVERSE.

APPLICANT'S TRAVERSE OF THE RESTRICTION REQUIREMENT IS NOT FOUND PERSUASIVE FOR REASONS OF RECORD, THEREFORE, THE RESTRICTION REQUIREMENT IS HEREBY MADE FINAL.

CLAIMS 1-9 AND 19-21 ARE WITHDRAWN FROM CONSIDERATION AS BEING DRAWN TO THE NON-ELECTED INVENTION (37 CFR 1.142(b)).

***CLAIM REJECTIONS - 35 U.S.C. § 102***

THE FOLLOWING IS A QUOTATION OF THE APPROPRIATE PARAGRAPHS OF 35 U.S.C. 102 THAT FORM THE BASIS FOR THE REJECTIONS UNDER THIS SECTION MADE IN THIS OFFICE ACTION:

A PERSON SHALL BE ENTITLED TO A PATENT UNLESS --

(A) THE INVENTION WAS KNOWN OR USED BY OTHERS IN THIS COUNTRY, OR PATENTED OR DESCRIBED IN A PRINTED PUBLICATION IN THIS OR A FOREIGN COUNTRY, BEFORE THE INVENTION THEREOF BY THE APPLICANT FOR A PATENT.

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CLAIMS 10 AND 18 ARE REJECTED UNDER 35 U.S.C. 102(A) AS BEING ANTICIPATED BY KABARA (PTO-1449).

KABARA TEACHES FATTY ACIDS AND DERIVATIVES AND ANTIMICROBIAL AGENTS USED IN FEED FOR ANIMALS. NOTE THE FATTY ACIDS ARE TWELVE CARBONS, SUCH AS LAURIC ACID.

CLAIMS 10 AND 18 ARE NOT ALLOWED.

***CLAIM REJECTIONS - 35 U.S.C. § 103***

THE FOLLOWING IS A QUOTATION OF 35 U.S.C. 103(A) WHICH FORMS THE BASIS FOR ALL OBVIOUSNESS REJECTIONS SET FORTH IN THIS OFFICE ACTION:

(A) A PATENT MAY NOT BE OBTAINED THOUGH THE INVENTION IS NOT IDENTICALLY DISCLOSED OR DESCRIBED AS SET FORTH IN SECTION 102 OF THIS TITLE, IF THE DIFFERENCES BETWEEN THE SUBJECT MATTER SOUGHT TO BE PATENTED AND THE PRIOR ART ARE SUCH THAT THE SUBJECT MATTER AS A WHOLE WOULD HAVE BEEN OBVIOUS AT THE TIME THE INVENTION WAS MADE TO A PERSON HAVING ORDINARY SKILL IN THE ART TO WHICH SAID SUBJECT MATTER PERTAINS. PATENTABILITY SHALL NOT BE NEGATED BY THE MANNER IN WHICH THE INVENTION WAS MADE.

CLAIMS 11-17 ARE REJECTED UNDER 35 U.S.C. 103(A) AS BEING UNPATENTABLE OVER KABARA.

KABARA WAS DISCUSSED ABOVE SUPRA FOR ITS FEATURES SHOWING FATTY ACIDS USED AS ANTIMICROBIAL AGENTS AND FORMULATED INTO ANIMAL FEED.

THE INSTANT INVENTION DIFFERS FROM THE CITED REFERENCE IN THAT THE CITED REFERENCE DOES NOT TEACH THE SPECIFIC HIGH LAURIC ACID OILS AS SET FORTH IN CLAIM 11 OR THE SPECIFIC RANGE AMOUNTS OF THE OILS. HOWEVER, ONE SKILLED IN THE ART WOULD HAVE BEEN MOTIVATED TO USE ANY TYPE OF HIGH LAURIC ACID OIL SET

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FORTH BY THE APPLICANT SHOULD THE OILS CONTAINS THE LAURIC ACID WHICH IS KNOWN FOR ITS ANTIMICROBIAL ACTIVITY. CLEARLY THE OTHER HIGH LAURIC ACID OILS POSSES THE SAME ACTIVITY AS LAURIC ACID PER SE IN THE ABSENCE OF EVIDENCE TO THE CONTRARY. THE DETERMINATION OF A RANGE AMOUNT HAVING OPTIMUM EFFECTIVENESS AGAINST VARIOUS BACTERIA OR MICROBES IS WELL WITHIN THE LEVEL OF ONE HAVING ORDINARY SKILL IN THE ART, AND THE ARTISAN WOULD HAVE BEEN MOTIVATED TO DETERMINE AN OPTIMUM RANGE AMOUNT TO GET THE MAXIMUM EFFECTIVENESS OF THE HIGH LAURIC ACID OILS.

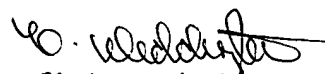
THE INSTANT INVENTION DIFFERS FROM THE CITED REFERENCE IN THAT THE CITED REFERENCE DOES NOT TEACH THE SPECIFIC TYPE OF BACTERIA IS DESTROYED BY THE INSTANT INVENTION. HOWEVER, SINCE THE HIGH LAURIC ACID OILS ARE WELL-KNOWN AS ANTIBACTERIAL AGENTS, IT WOULD HAVE BEEN OBVIOUS TO USE THE ACTIVE INGREDIENTS TO DESTROY *SALMONELLA TYPHIMURIUM* IN THE ABSENCE OF EVIDENCE TO THE CONTRARY.

CLAIMS 11-17 ARE NOT ALLOWED.

ANY INQUIRY CONCERNING THIS COMMUNICATION OR EARLIER COMMUNICATIONS FROM THE EXAMINER SHOULD BE DIRECTED TO EXAMINER K. WEDDINGTON WHOSE TELEPHONE NUMBER IS (703) 308-1235.

K. WEDDINGTON

NOVEMBER 30, 2001

  
Kevin E. Weddington  
Primary Examiner  
Art Unit 1614